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(Original Signature of Member)

109TH CONGRESS
1ST SESSION

H. R. _____

To establish an independent Commission to investigate detainee abuses.

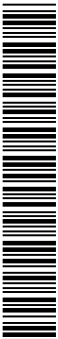
IN THE HOUSE OF REPRESENTATIVES

Mr. WAXMAN introduced the following bill; which was referred to the
Committee on _____

A BILL

To establish an independent Commission to investigate
detainee abuses.

- 1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 **SECTION 1. ESTABLISHMENT OF COMMISSION.**
4 There is established in the legislative branch the
5 Independent Commission on the Investigation of Detainee
6 Abuses (in this title referred to as the “Commission”).



1 **SEC. 2. DUTIES.**

2 (a) INVESTIGATION.—The Commission shall conduct
3 a full, complete, independent, and impartial investigation
4 of the abuses of detainees in connection with Operation
5 Iraqi Freedom, Operation Enduring Freedom, or any op-
6 eration within the Global War on Terrorism, including but
7 not limited to the following:

8 (1) The extent of the abuses.

9 (2) Why the abuses occurred.

10 (3) Who is responsible for the abuses.

11 (4) Whether any particular Department of De-
12 fense, Department of State, Department of Justice,
13 Central Intelligence Agency, National Security
14 Council, or White House policies, procedures, or de-
15 cisions facilitated the detainee abuses.

16 (5) What policies, procedures, or mechanisms
17 failed to prevent the abuses.

18 (6) What legislative or executive actions should
19 be taken to prevent such abuses from occurring in
20 the future.

21 (7) The extent, if any, to which Guantanamo
22 Detention Center policies influenced policies at the
23 Abu Ghraib prison and other detention centers in
24 and outside Iraq.

25 (b) ASSESSMENT, ANALYSIS, AND EVALUATION.—
26 During the course of its investigation, the Commission



1 shall assess, analyze, and evaluate relevant persons, poli-
2 cies, procedures, reports, and events, including but not
3 limited to the following:

4 (1) The Military Chain of Command.

5 (2) The National Security Council.

6 (3) The Department of Justice.

7 (4) The Department of State.

8 (5) The Office of the White House Counsel.

9 (6) The Defense Intelligence Agency and the
10 Central Intelligence Agency.

11 (7) The approval process for interrogation tech-
12 niques used at detention facilities in Iraq, Cuba, Af-
13 ghanistan, and elsewhere.

14 (8) The integration of military police and mili-
15 tary intelligence operations to coordinate detainee
16 interrogation.

17 (9) The roles and actions of private civilian con-
18 tractors in the abuses and whether they violated the
19 Military Extraterritorial Jurisdiction Act or any
20 other United States statutes or international treaties
21 to which the United States is a party.

22 (10) The role of nongovernmental organiza-
23 tions' warnings to United States officials about the
24 abuses.



1 (11) The role of Congress and whether it was
2 fully informed throughout the process that uncov-
3 ered these abuses.

4 (12) The extent to which the United States
5 complied with the applicable provisions of the Gene-
6 va Conventions of 1949, and the extent to which the
7 United States may have violated international law by
8 restricting the access of the International Committee
9 of the Red Cross to detainees.

10 (13) The extent to which the United States
11 complied with the applicable provisions of other
12 human rights treaties, including the International
13 Covenant on Civil and Political Rights and the Con-
14 vention Against Torture and Other Cruel, Inhuman
15 or Degrading Treatment or Punishment.

16 **SEC. 3. COMPOSITION OF COMMISSION.**

17 (a) MEMBERS.—The Commission shall be composed
18 of 10 members, of whom—

19 (1) 1 member shall be appointed by the Presi-
20 dent;

21 (2) 1 member shall be jointly appointed by the
22 minority leader of the Senate and the minority lead-
23 er of the House of Representatives;

24 (3) 2 members shall be appointed by the major-
25 ity leader of the Senate;



1 (4) 2 members shall be appointed by the Speak-
2 er of the House of Representatives;

3 (5) 2 members shall be appointed by the minor-
4 ity leader of the Senate; and

5 (6) 2 members shall be appointed by the minor-
6 ity leader of the House of Representatives.

7 (b) QUALIFICATIONS; INITIAL MEETING.—

8 (1) NONGOVERNMENTAL APPOINTEES.—An in-
9 dividual appointed to the Commission may not be an
10 officer or employee of the Federal Government or
11 any State or local government.

12 (2) OTHER QUALIFICATIONS.—Individuals that
13 shall be appointed to the Commission should be
14 prominent United States citizens, with national rec-
15 ognition and significant depth of experience in such
16 professions as governmental service, law enforce-
17 ment, the armed services, law, public administration,
18 intelligence gathering, international human rights
19 and humanitarian law, and foreign affairs.

20 (3) DEADLINE FOR APPOINTMENT.—All mem-
21 bers of the Commission shall be appointed within 45
22 days following the enactment of this Act.

23 (4) CHAIRMAN AND VICE CHAIRMAN.—The
24 chairman and vice chairman of the Commission shall
25 be elected by a majority vote of the members.



1 (5) MEETINGS.—The Commission shall meet
2 and begin the operations of the Commission as soon
3 as practicable. After its initial meeting, the Commis-
4 sion shall meet upon the call of the chairman or a
5 majority of its members.

6 (c) QUORUM; VACANCIES.—Six members of the Com-
7 mission shall constitute a quorum. Any vacancy in the
8 Commission shall not affect its powers, but shall be filled
9 in the same manner in which the original appointment was
10 made.

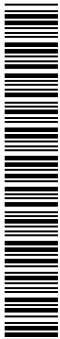
11 (d) CONFLICTS OF INTEREST.—

12 (1) FINANCIAL DISCLOSURE.—Each member
13 appointed to the Commission shall submit a finan-
14 cial disclosure report pursuant to the Ethics in Gov-
15 ernment Act of 1978, notwithstanding the minimum
16 required rate of compensation or time period em-
17 ployed.

18 (2) INDEPENDENCE FROM SUBJECTS OF INVES-
19 TIGATIONS.—Each member appointed to the Com-
20 mission shall be independent of any agency, indi-
21 vidual, or institution that may be the subject of in-
22 vestigation by the Commission.

23 **SEC. 4. POWERS OF COMMISSION.**

24 (a) IN GENERAL.—



1 (1) HEARINGS AND EVIDENCE.—The Commis-
2 sion or, on the authority of the Commission, any
3 subcommittee or member thereof, may, for the pur-
4 pose of carrying out this title—

5 (A) hold such hearings and sit and act at
6 such times and places, take such testimony, re-
7 ceive such evidence, administer such oaths; and

8 (B) subject to paragraph (2)(A), require,
9 by subpoena or otherwise, the attendance and
10 testimony of such witnesses and the production
11 of such books, records, correspondence, memo-
12 randa, papers, and documents,

13 as the Commission or such designated subcommittee
14 or designated member may determine advisable.

15 (2) SUBPOENAS.—

16 (A) ISSUANCE.—

17 (i) IN GENERAL.—A subpoena may be
18 issued under this subsection only—

19 (I) by the agreement of the
20 chairman and the vice chairman; or

21 (II) by the affirmative vote of 6
22 members of the Commission.

23 (ii) SIGNATURE.—Subject to clause
24 (i), subpoenas issued under this subsection
25 may be issued under the signature of the



1 chairman or any member designated by a
2 majority of the Commission, and may be
3 served by any person designated by the
4 chairman or by a member designated by a
5 majority of the Commission.

6 (B) ENFORCEMENT.—

7 (i) IN GENERAL.—In the case of con-
8 tumacy or failure to obey a subpoena
9 issued under this subsection, the United
10 States district court for the judicial district
11 in which the subpoenaed person resides, is
12 served, or may be found, or where the sub-
13 poena is returnable, may issue an order re-
14 quiring such person to appear at any des-
15 ignated place to testify or to produce docu-
16 mentary or other evidence. Any failure to
17 obey the order of the court may be pun-
18 ished by the court as a contempt of that
19 court.

20 (ii) ADDITIONAL ENFORCEMENT.—In
21 the case of any failure of any witness to
22 comply with any subpoena or to testify
23 when summoned under authority of this
24 subsection, the Commission may, by major-
25 ity vote, certify a statement of fact consti-



1 tuting such failure to the appropriate
2 United States attorney, who may bring the
3 matter before the grand jury for its action,
4 under the same statutory authority and
5 procedures as if the United States attorney
6 had received a certification under sections
7 102 through 104 of the Revised Statutes
8 of the United States (2 U.S.C. 192
9 through 194).

10 (3) SCOPE.—In carrying out its duties under
11 this Act, the Commission may examine the actions
12 and representations of the current Administration as
13 well as prior Administrations.

14 (b) CONTRACTING.—The Commission may, to such
15 extent and in such amounts as are provided in appropria-
16 tion Acts, enter into contracts to enable the Commission
17 to discharge its duties of this Act.

18 (c) INFORMATION FROM FEDERAL AGENCIES.—

19 (1) IN GENERAL.—The Commission may secure
20 directly from any executive department, bureau,
21 agency, board, commission, office, independent es-
22 tablishment, or instrumentality of the Federal Gov-
23 ernment, information, suggestions, estimates, and
24 statistics for the purposes of this Act. Each depart-
25 ment, bureau, agency, board, commission, office,



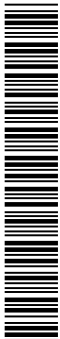
1 independent establishment, or instrumentality shall,
2 to the extent authorized by law, furnish such infor-
3 mation, suggestions, estimates, and statistics di-
4 rectly to the Commission, upon request made by the
5 chairman, the chairman of any subcommittee cre-
6 ated by a majority of the Commission, or any mem-
7 ber designated by a majority of the Commission.

8 (2) RECEIPT, HANDLING, STORAGE, AND DIS-
9 SEMINATION.—Information shall only be received,
10 handled, stored, and disseminated by members of
11 the Commission and its staff consistent with all ap-
12 plicable statutes, regulations, and Executive orders.

13 (d) ASSISTANCE FROM FEDERAL AGENCIES.—

14 (1) GENERAL SERVICES ADMINISTRATION.—
15 The Administrator of General Services shall provide
16 to the Commission on a reimbursable basis adminis-
17 trative support and other services for the perform-
18 ance of the Commission's functions.

19 (2) OTHER DEPARTMENTS AND AGENCIES.—In
20 addition to the assistance prescribed in paragraph
21 (1), departments and agencies of the United States
22 may provide to the Commission such services, funds,
23 facilities, staff, and other support services as they
24 may determine advisable and as may be authorized
25 by law.



1 (e) GIFTS.—The Commission may accept, use, and
2 dispose of gifts or donations of services or property.

3 (f) POSTAL SERVICES.—The Commission may use
4 the United States mails in the same manner and under
5 the same conditions as departments and agencies of the
6 United States.

7 **SEC. 5. NONAPPLICABILITY OF FEDERAL ADVISORY COM-**
8 **MITTEE ACT.**

9 (a) IN GENERAL.—The Federal Advisory Committee
10 Act (5 U.S.C. App.) shall not apply to the Commission.

11 (b) PUBLIC MEETINGS AND RELEASE OF PUBLIC
12 VERSIONS OF REPORTS.—The Commission shall—

13 (1) hold public hearings and meetings to the ex-
14 tent appropriate; and

15 (2) release public versions of the reports re-
16 quired under section 9.

17 (c) PUBLIC HEARINGS.—Any public hearings of the
18 Commission shall be conducted in a manner consistent
19 with the protection of information provided to or developed
20 for or by the Commission as required by any applicable
21 statute, regulation, or Executive order.

22 **SEC. 6. STAFF OF COMMISSION.**

23 (a) IN GENERAL.—

24 (1) APPOINTMENT AND COMPENSATION.—The
25 chairman and the vice chairman jointly, in accord-



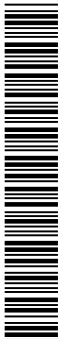
1 ance with rules agreed upon by the Commission,
2 may appoint and fix the compensation of a staff di-
3 rector and such other personnel as may be necessary
4 to enable the Commission to carry out its functions,
5 without regard to the provisions of title 5, United
6 States Code, governing appointments in the competi-
7 tive service, and without regard to the provisions of
8 chapter 51 and subchapter III of chapter 53 of such
9 title relating to classification and General Schedule
10 pay rates, except that no rate of pay fixed under this
11 subsection may exceed the equivalent of that payable
12 for a position at level V of the Executive Schedule
13 under section 5316 of title 5, United States Code.

14 (2) PERSONNEL AS FEDERAL EMPLOYEES.—

15 (A) IN GENERAL.—The staff director and
16 any personnel of the Commission who are em-
17 ployees shall be employees under section 2105
18 of title 5, United States Code, for purposes of
19 chapters 63, 81, 83, 84, 85, 87, 89, and 90 of
20 that title.

21 (B) MEMBERS OF COMMISSION.—Subpara-
22 graph (A) shall not be construed to apply to
23 members of the Commission.

24 (b) DETAILEES.—Any Federal Government employee
25 may be detailed to the Commission without reimbursement



1 from the Commission, and such detailee shall retain the
2 rights, status, and privileges of his or her regular employ-
3 ment without interruption.

4 (c) CONSULTANT SERVICES.—The Commission is au-
5 thorized to procure the services of experts and consultants
6 in accordance with section 3109 of title 5, United States
7 Code, but at rates not to exceed the daily rate paid a per-
8 son occupying a position at level IV of the Executive
9 Schedule under section 5315 of title 5, United States
10 Code.

11 **SEC. 7. COMPENSATION AND TRAVEL EXPENSES.**

12 (a) COMPENSATION.—Each member of the Commis-
13 sion may be compensated at a rate not to exceed the daily
14 equivalent of the annual rate of basic pay in effect for
15 a position at level IV of the Executive Schedule under sec-
16 tion 5315 of title 5, United States Code, for each day dur-
17 ing which that member is engaged in the actual perform-
18 ance of the duties of the Commission.

19 (b) TRAVEL EXPENSES.—While away from their
20 homes or regular places of business in the performance
21 of services for the Commission, members of the Commis-
22 sion shall be allowed travel expenses, including per diem
23 in lieu of subsistence, in the same manner as persons em-
24 ployed intermittently in the Government service are al-



1 lowed expenses under section 5703(b) of title 5, United
2 States Code.

3 **SEC. 8. SECURITY CLEARANCES FOR COMMISSION MEM-**
4 **BERS AND STAFF.**

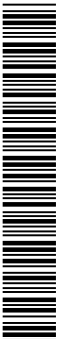
5 (a) IN GENERAL.—Subject to subsection (b), the ap-
6 propriate Federal agencies or departments shall cooperate
7 with the Commission in expeditiously providing to the
8 Commission members and staff appropriate security clear-
9 ances to the extent possible pursuant to existing proce-
10 dures and requirements.

11 (b) EXCEPTION.—No person shall be provided with
12 access to classified information under this title without the
13 appropriate required security clearance access.

14 **SEC. 9. REPORTS OF COMMISSION; TERMINATION.**

15 (a) INTERIM REPORTS.—The Commission may sub-
16 mit to Congress and the President interim reports con-
17 taining such findings, conclusions, and recommendations
18 for corrective measures as have been agreed to by a major-
19 ity of Commission members.

20 (b) FINAL REPORT.—Not later than 18 months after
21 the date of the enactment of this Act, the Commission
22 shall submit to Congress and the President a final report
23 containing such findings, conclusions, and recommenda-
24 tions for corrective measures as have been agreed to by
25 a majority of Commission members.



1 (c) FORM OF REPORT.—Each report prepared under
2 this section shall be submitted in unclassified form, but
3 may contain a classified annex.

4 (d) RECOMMENDATION TO MAKE PUBLIC CERTAIN
5 CLASSIFIED INFORMATION.—If the Commission deter-
6 mines that it is in the public interest that some or all of
7 the information contained in a classified annex of a report
8 under this section be made available to the public, the
9 Commission shall make a recommendation to the congres-
10 sional intelligence committees to make such information
11 public, and the congressional intelligence committees shall
12 consider the recommendation pursuant to the procedures
13 under subsection (e).

14 (e) PROCEDURE FOR DECLASSIFYING INFORMA-
15 TION.—

16 (1) The procedures referred to in subsection (d)
17 are the procedures described in—

18 (A) with respect to the Permanent Select
19 Committee on Intelligence of the House of Rep-
20 resentatives, clause 11(g) of rule X of the Rules
21 of the House of Representatives, One Hundred
22 Ninth Congress; and

23 (B) with respect to the Select Committee
24 on Intelligence of the Senate, section 8 of Sen-
25 ate Resolution 400, Ninety-Fourth Congress.



1 (2) In this section, the term “congressional in-
2 telligence committees” means—

3 (A) the Permanent Select Committee on
4 Intelligence of the House of Representatives;
5 and

6 (B) the Select Committee on Intelligence
7 of the Senate.

8 **SEC. 10. TERMINATION.**

9 (a) IN GENERAL.—The Commission, and all the au-
10 thorities of this Act, shall terminate 60 days after the date
11 on which the final report is submitted under section 9(b).

12 (b) ADMINISTRATIVE ACTIVITIES BEFORE TERMI-
13 NATION.—The Commission may use the 60-day period re-
14 ferred to in paragraph (1) for the purpose of concluding
15 its activities, including providing testimony to committees
16 of Congress concerning its reports and disseminating the
17 final report.

18 **SEC. 11. FUNDING.**

19 (a) AUTHORIZATION OF APPROPRIATIONS.—There is
20 authorized to be appropriated funds not to exceed
21 \$5,000,000 for purposes of the activities of the Commis-
22 sion under this Act.

23 (b) DURATION OF AVAILABILITY.—Amounts made
24 available to the Commission under subsection (a) shall re-
25 main available until the termination of the Commission.

